

After Recording Return to:
City of Frisco
6101 Frisco Square Boulevard, 5th Floor East
Frisco, Texas 75034

DEVELOPMENT AGREEMENT
(Project Identification Sign)

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this day of _____, 2010 (the "effective date of the Agreement"), by and between the City of Frisco, Texas, a Texas municipal corporation ("Frisco"), HILLS OF KINGWOOD, L.P. ("Developer"), a Texas limited partnership, and THE HILLS OF KINGWOOD HOMEOWNER'S ASSOCIATION, INC., a Texas Corporation ("HOA").

WHEREAS, Developer is the owner of that certain tract of land situated in the City of Frisco, Denton County, Texas, containing approximately 114.672 acres, situated in the J.W. Ragland Survey, Abstract Number 1092, as more particularly described and depicted on ***Exhibit "1"***, attached hereto and incorporated herein for all purposes; and

WHEREAS, HOA is the organization created by the Developer to manage or regulate the planned development covered by that certain document entitled Declaration of Covenants, Conditions, and Restrictions for The Hills of Kingwood recorded under Clerk's File No. 2008-124285 of the Real Property Records of Collin County, Texas; and

WHEREAS, Frisco has investigated and determined that it would be advantageous and beneficial to Frisco and its citizens to allow the placement of a Project Identification Sign, landscaping, and associated improvements (hereinafter defined) within the right-of-way for Rock Creek Parkway ("Property") by Developer and HOA, subject to the terms and conditions more particularly described herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Frisco, Developer, and HOA agree as follows:

1. **Findings Incorporated.** The findings set forth above are made a part of this Agreement as if set forth herein verbatim.
2. **Land Subject to Agreement.** The land that is subject to this Agreement is the Property as defined above and more particularly described on ***Exhibit "2"***, attached hereto and incorporated herein by reference.
3. **Project Identification Sign and Landscaping.** Upon execution of this Agreement by all parties, Developer is allowed to install or cause to be installed landscaping, a Project Identification Sign, and associated improvements on the Property in accordance with the design details provided on the site plan, landscape plan, and sign elevation drawings in ***Exhibit "3"***, attached hereto and incorporated herein by reference ("Project Identification Sign, landscaping, and associated improvements"). The Project Identification Sign, landscaping, and associated improvements shall be completed within one hundred and eighty (180) days of the commencement of the construction/erection of same.
4. **Maintenance/Repair.** It shall be the sole responsibility of HOA to maintain and repair the Project Identification Sign, landscaping, and associated improvements during the term of

this Agreement. Frisco may limit the hours during which HOA may perform said maintenance and repair as reasonable and necessary to ensure public safety. HOA agrees to repair the Project Identification Sign, landscaping, and associated improvements within five (5) business days of the receipt of Frisco's written request for repair. HOA agrees to maintain a regular maintenance schedule to check the Project Identification Sign, landscaping, and associated improvements for all necessary repairs and to complete those repairs promptly. HOA further agrees to maintain the Project Identification Sign, landscaping, and associated improvements in conformity with all terms of this Agreement.

5. **Default.** If Developer or HOA fail to comply with the provisions of this Agreement, Frisco shall have the following remedies, in addition to Frisco's other rights and remedies:

- a. to file this instrument in the Land Records of Collin County as a lien and/or encumbrance on the Property; and/or
- b. to nullify paragraph three (3) of this Agreement and immediately enforce its standard rules and regulations for the design and location of signage; and/or
- c. to seek specific enforcement of this Agreement.

In the event Frisco fails to comply with the terms and conditions of this Agreement, Developer or HOA may seek specific enforcement of this Agreement as its sole and exclusive remedy.

6. **Insurance.** Developer or HOA shall maintain, at its sole cost and expense, in full force and effect throughout the entire term of this Agreement (or in the case of required Workers Compensation policies, during work authorized to be performed under this Agreement) insurance with an insurance company authorized to conduct business in Frisco with the following policy limits:

- a. Comprehensive General Liability (bodily injury, death and property damage) - \$1,000,000.00 for each occurrence and \$2,000,000.00 annual aggregate;
- b. Automobile Liability - \$1,000,000.00;
- c. Workers Compensation
 1. Bodily Injury by Accident - \$1,000,000.00
 2. Bodily Injury by Disease - \$500,000.00

Coverage under this liability policy must be on an occurrence basis and Frisco shall be named as additional insured. All subrogation rights for loss or damage against Frisco are hereby waived to the extent that they are covered by these insurance policies. Upon execution of this Agreement (or in the case of required Workers Compensation policies, during work authorized to be performed under this Agreement), Developer or HOA shall present a Certificate of Insurance in a form satisfactory to Frisco. If during the term of this Agreement (or in the case of required Workers Compensation policies, during work authorized to be performed under this Agreement), any such insurance is canceled, or if Developer or HOA fails to renew the same, or if the policy limits are reduced below the limits required above, such event shall constitute a default of this Agreement. Developer or HOA shall immediately notify Frisco in writing if such an event occurs. Developer or HOA shall have five (5) business days to cure any such default.

7. **Covenant Running with the Land.** This Agreement shall be a covenant running with the land and shall be binding upon the Developer and HOA, their officers, directors, partners, employees, representatives, agents, successors, assignees, vendors, grantees and/or trustees. In addition, the parties shall cause this Agreement to be filed in the Land Records of Denton County, Texas.

8. **Limitations of Agreement.** The parties hereto acknowledge that this Agreement is limited to the location, construction, maintenance and repair of the Project Identification Sign, landscaping, and associated improvements. Further this Agreement does not waive or limit any of the obligations of Developer or HOA to Frisco under any ordinance, whether now existing or in the future arising.

9. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Frisco, addressed to it at:

City of Frisco
City Manager
6101 Frisco Square Boulevard, 5th Floor
Frisco, Texas 75034
Telephone: (972) 292-5100
Facsimile: (972) 292-5122

With a copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.
Attention: Rebecca Brewer
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4040

If to Developer, addressed to it at:

Hills of Kingwood, L.P.
Attention: John Zouzelka
14860 Montfort Drive
Suite 205
Dallas, TX 75254

If to HOA, addressed to it at:

The Hills of Kingwood Homeowners Association, Inc.

Attention: Roque Saco-Vertiz
14860 Montfort Drive
Suite 205
Dallas, TX 75254

With a copy to:

Winstead, PC
Attention: Kirk Williams
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
Telephone: (214) 745-5746
Facsimile: (214) 745-5390

10. **INDEMNIFICATION.** DEVELOPER AND HOA, INDIVIDUALLY AND ON BEHALF OF ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES, DO HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS FRISCO AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE APPLICABLE DEVELOPER OR HOA, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, TRUSTEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM SUCH DEVELOPER OR HOA IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF FRISCO (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST FRISCO BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN DEVELOPER OR HOA, AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE DEVELOPER OR HOA, INCLUDING BUT NOT LIMITED TO, ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. IN THIS CONNECTION, DEVELOPER AND HOA, INDIVIDUALLY AND ON BEHALF OF ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES, AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS FRISCO, ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FOR FRISCO'S, ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND/OR EMPLOYEES, OWN NEGLIGENCE, IN WHATEVER FORM, ARISING OUT OF ANY ACT OR OMISSION, TAKEN OR FAILED TO BE

TAKEN BY THE CITY, RELATING IN ANY MANNER TO THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF CAUSE OR ANY CONCURRENT OR CONTRIBUTING FAULT OR NEGLIGENCE OF FRISCO. DEVELOPER OR HOA IS EXPRESSLY REQUIRED TO DEFEND FRISCO AGAINST ALL SUCH CLAIMS, AND FRISCO IS REQUIRED TO REASONABLY COOPERATE AND ASSIST DEVELOPER OR HOA IN PROVIDING SUCH DEFENSE; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT FRISCO (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN DEVELOPER IS NOT REQUIRED TO INDEMNIFY OR DEFEND FRISCO TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO FRISCO FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT FRISCO IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, FRISCO AGREES TO REIMBURSE DEVELOPER OR HOA FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY DEVELOPER OR HOA THAT ARE ATTRIBUTABLE TO FRISCO'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO DEVELOPER OR HOA WITHIN ONE HUNDRED TWENTY (120) DAYS OF THE DATE OF THE JUDGMENT.

IN ITS SOLE DISCRETION, FRISCO SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE DEVELOPER AND/OR HOA IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY FRISCO, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY FRISCO IN WRITING. FRISCO RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, FRISCO IS UNDER NO OBLIGATION TO DO SO. ANY SUCH OBLIGATION BY FRISCO IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY FRISCO PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN FRISCO-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF FRISCO'S WRITTEN NOTICE THAT FRISCO IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER AND/OR HOA FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, FRISCO SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER AND/OR HOA SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY FRISCO.

11. PARTIES' ACKNOWLEDGEMENT OF FRISCO'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/DEVELOPER'S AND HOA'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

A. DEVELOPER AND HOA ACKNOWLEDGE AND AGREE THAT:

- (I) THE CONVEYANCES, DEDICATIONS, EASEMENTS AND/OR PAYMENT OF MONEY REQUIRED BY THIS AGREEMENT TO BE PERFORMED BY DEVELOPER OR HOA, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:
 - (A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
 - (B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;
 - (C) NUISANCE; AND/OR
 - (D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR

FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR
REGULATION.

- (II) THE AMOUNT OF DEVELOPER'S AND HOA'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S DEVELOPMENT PLACES ON FRISCO'S INFRASTRUCTURE.
 - (III) DEVELOPER AND HOA HEREBY RELEASES FRISCO FROM ANY OBLIGATION TO PERFORM OR COMMISSION A TAKINGS IMPACT ASSESSMENT UNDER CHAPTER 2007 OF THE TEXAS GOVERNMENT CODE, AS IT EXISTS OR MAY BE AMENDED.
 - (IV) DEVELOPER AND HOA HEREBY AGREE THAT THE PROPERTY AND/OR EASEMENTS WHICH IT CONVEYS TO FRISCO PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY DEVELOPER AND HOA FOR SUCH LAND, AND DEVELOPER AND HOA HEREBY WAIVE ANY CLAIM THEREFOR THAT IT MAY HAVE. DEVELOPER AND HOA FURTHER ACKNOWLEDGE AND AGREE THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY FRISCO RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT OF DEVELOPER'S AND/OR HOA'S ADJACENT PROPERTY ON FRISCO'S INFRASTRUCTURE. DEVELOPER, HOW AND FRISCO FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.
 - (V) DEVELOPER AND HOA SHALL, JOINTLY AND SEVERALLY, INDEMNIFY AND HOLD HARMLESS FRISCO FROM ANY CLAIMS AND SUITS OF THIRD PARTIES BROUGHT PURSUANT TO THIS PARAGRAPH.
- (B) DEVELOPER AND HOA RELEASE FRISCO FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS UNDER THIS AGREEMENT.
- (C) DEVELOPER AND HOA HEREBY WAIVE ANY REQUIREMENT THAT FRISCO RETAIN A PROFESSIONAL ENGINEER, LICENSED PURSUANT TO CHAPTER 1001 OF THE TEXAS OCCUPATIONS CODE, TO REVIEW AND DETERMINE THAT THE EXACTIONS REQUIRED BY FRISCO AS A CONDITION OF APPROVAL FOR THE DEVELOPMENT OF ITS PROPERTY ARE ROUGHLY PROPORTIONAL OR ROUGHLY PROPORTIONATE TO THE PROPOSED DEVELOPMENT'S ANTICIPATED IMPACT. (THESE EXACTIONS MAY INCLUDE, BUT ARE NOT LIMITED TO, THE MAKING OF DEDICATIONS OR RESERVATIONS OF LAND, THE PAYMENT OF FEES, THE CONSTRUCTION OF FACILITIES, AND THE PAYMENT OF CONSTRUCTION COSTS FOR PUBLIC FACILITIES.) DEVELOPER AND HOA

SPECIFICALLY RESERVE THEIR RIGHT TO APPEAL THE APPORTIONMENT OF MUNICIPAL INFRASTRUCTURE COSTS IN ACCORDANCE WITH TEX. LOC. GOV'T CODE § 212.904. HOWEVER, NOTWITHSTANDING THE FOREGOING, DEVELOPER AND HOA HEREBY RELEASE FRISCO FROM ANY AND ALL LIABILITY UNDER TEX. LOC. GOV'T CODE § 212.904 REGARDING OR RELATED TO THE COST OF THOSE MUNICIPAL INFRASTRUCTURE IMPROVEMENTS REQUIRED FOR THE DEVELOPMENT OF THE PROPERTY.

(D) DEVELOPER AND HOA WAIVE ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION, EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT.

(E) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12. **Vested Rights/Chapter 245 Waiver.** The signatories hereto shall be subject to all ordinances of Frisco, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property or the property described in ***Exhibit "1"***, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code, and nothing in this Agreement provides Frisco with fair notice of Developer's project. **DEVELOPER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE UNDER THIS AGREEMENT.**

13. **Attorney's Fees.** In any legal proceeding brought to enforce the terms of this Agreement the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended. In addition, Developer agrees to pay the reasonable attorney's fees incurred by Frisco for review and negotiation of this Agreement. Developer will pay said attorney's fees within 60 days of receipt of a written invoice providing detailed narratives of the actions taken by each attorney reviewing or negotiating the Agreement, the amount of time spent by each attorney, and the corresponding billing rate of each attorney.

14. **Incorporation of Recitals.** The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of Frisco and the authorized representative of Developer and HOA.

15. **Developer's and HOA's Warranties/Representations.** All warranties, representations and covenants made by Developer and HOA in this Agreement or in any certificate or other instrument delivered by Developer or HOA to Frisco under this Agreement shall be considered to have been relied upon by Frisco and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by Frisco or on Frisco's behalf.

16. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

17. **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

18. **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

19. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

20. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

21. **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

23. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

24. **Assignment/Binding Effect.** This Agreement is assignable upon the following conditions:

- a. the assignment of the Agreement must be evidenced by a recordable document. The recordable document referred to in this paragraph is subject to the reasonable approval of Frisco;
- b. at the time of assignment, Developer or HOA must give the assignee written notice that any and all obligations, covenants and/or conditions contained in the Agreement will be assumed solely and completely by the assignee. The notice provided pursuant to this paragraph is subject to the reasonable approval of Frisco;
- c. Developer or HOA will file any approved, executed assignments in the Land Records of Denton County, Texas; and
- d. Developer or HOA shall provide Frisco with the name, address, phone number, fax number and the name of a contact person for the assignee.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective officers, directors, partners, employees, representatives, agents, vendors, grantees,

and/or trustees, heirs, executors, administrators, legal representatives, successors and assigns, as authorized herein.

25. **Indemnification.** The parties agree that the Indemnity provisions set forth in Paragraphs 10 and 11 herein are conspicuous, and the parties have read and understood the same.

26. **Construction.** All construction described herein shall be subject to and in compliance with all ordinances of Frisco, whether now or existing, hereafter amended or in the future arising. Evidence of any bonds required by Section 212.073 of the Texas Local Government Code, or other applicable law, shall be provided by Developer or HOA to Frisco.

27. **Conveyances.** All conveyances required herein shall be made in a form acceptable to Frisco and free and clear of any and all encumbrances.

28. **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

29. **Reference to Developer and HOA.** When referring to "Developer" or "HOA" herein, this Agreement shall refer to and be binding upon all parties within the herein defined term Developer, and their officers, directors, partners, employees, representatives, contractors, agents, successors, assignees, vendors, grantees and/or trustees.

30. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

31. **Term and Termination of Agreement.**

- a. **Term.** The term of this Agreement is five (5) years.
- b. **Renewal.** At the end of the initial and each consecutive five-year term, this Agreement will automatically renew for an additional five (5) year term unless any party provides at least sixty (60) days advance notice before the end of the initial term or a consecutive term, of their intention to terminate this Agreement.
- c. **Termination.** Except as otherwise provided herein, no party may terminate this Agreement within the first five (5) years of the initial term. After the first five (5) years of the initial term, this Agreement may be terminated by any party upon providing thirty (30) days written notice to the other parties. Any party, at any point (even within the first five (5) years of the initial term), may terminate this Agreement if there is a breach of this Agreement by any other party.
- d. **Effect of Termination.**
 1. **Termination by Frisco.** If Frisco terminates this Agreement, Frisco may, in its sole discretion (i) require the Developer or HOA to remove, at Developer's or HOA's sole cost and expense, the Project Identification Sign, landscaping, and

and repair responsibilities of the Project Identification Sign, landscaping, and associated improvements.

2. **Termination by Developer or HOA.** If Developer or HOA terminates this Agreement, Developer or HOA shall, at Frisco's sole option (i) remove, at Developer's or HOA's sole cost and expense, the Project Identification Sign, landscaping, and associated improvements within thirty (30) business days after sending a written termination letter to Frisco and return the Property to as near its original condition as is reasonably possible; or (ii) allow Frisco to assume ownership and maintenance and repair responsibilities of the Project Identification Sign, landscaping, and associated improvements

32. **Independent Contractor.** Developer and HOA shall, at all times herein, be an independent contractor and not an employee of Frisco.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

FRISCO:

City of Frisco, Texas
a municipal corporation

By: _____
George Purefoy, City Manager

DEVELOPER:


Hills of Kings Wood, L.P.
a Texas limited partnership

By: HKW GP, LLC
Its: General Partner

By: 
Nicholas DiGiuseppe, Managing Member

HOA:

The Hills of Kingswood Homeowner's Association, Inc.
a Texas non-profit corporation

By: 
Nick DiGiuseppe, Director

STATE OF TEXAS
COUNTY OF COLLIN

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared **George Purefoy**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the City of Frisco, Texas, and he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 2009.

Notary Public in and for the State of Texas

My Commission Expires: _____

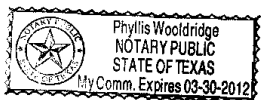
STATE OF TEXAS

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COUNTY OF Dallas

BEFORE ME, the undersigned authority, on this day personally appeared Nicholas DiGiuseppe, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for Hills of Kingwood, L.P., and he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of January, 2009.



Phyllis Wooldridge
Notary Public in and for the State of Texas

My Commission Expires: _____

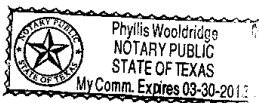
STATE OF TEXAS

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COUNTY OF Dallas

BEFORE ME, the undersigned authority, on this day personally appeared Nicholas DiGiuseppe, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for The Hills of Kingwood Homeowner's Association, Inc., and he/she executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of January, 2009.



Phyllis Wooldridge
Notary Public in and for the State of Texas

My Commission Expires: _____

DEVELOPMENT AGREEMENT – PAGE 11

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